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UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re SimDesk Technologies, Inc.

Serial No. 78266434

Scott J. Stevens, Esq. for SimDesk Technologies, Inc.

Ellen Awrich, Trademark Examining Attorney, Law Office 116
(M. L. Hershkowitz, Managing Attorney).

Before Hanak, Hairston and Holtzman, Administrative Trademark
Judges.

Opinion by Hanak, Administrative Trademark Judge:

SimDesk Technologies, Inc. (applicant) seeks to register
WORLD WIDE SERVER MP in standard character form for the
following goods and services:

International Class 9: Communications software
for connecting computer users to a global
computer network and for allowing computer users
to access on-line software applications, namely,
word processing, spreadsheet, database, personal
information management, file management, and
email applications, and applications that
provide a user with the ability to design and

create data archiving systems, to send printing instructions via a global computer network to a remote printer, and to develop multimedia presentations by integrating text, audio, graphics, still images and/or moving pictures.

International Class 42: Application service provider services featuring on-line software applications for use in word processing, spreadsheet development, database development, personal information management, file management, e-mail, remote printing, data archiving system development and multimedia presentation development.

The intent-to-use application was filed on June 24, 2003.

Citing Section 2(e)(1) of the Trademark Act, the Examining Attorney refused registration on the basis that applicant's mark is merely descriptive of applicant's goods and services. When the refusal to register was made final, applicant appealed to this Board. Applicant and the Examining Attorney filed briefs. Applicant did not request an oral hearing.

As has been stated repeatedly, "a term is merely descriptive if it forthwith conveys an immediate idea of the ingredients, qualities or characteristics of the goods [or services]." In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215, 218 (CCPA 1978) (emphasis added); Abercrombie & Fitch Co. v. Hunting World, Inc., 537 F.2d 4, 189 USPQ 759, 765 (2nd Cir. 1976). Moreover, the immediate idea must be

conveyed forthwith with a "degree of particularity." In re TMS Corp. of the Americas, 200 USPQ 57, 59 (TTAB 1978); In re Entenmann's Inc., 15 USPQ2d 1750, 1751 (TTAB 1990), aff'd 90-1495 (Fed. Cir. February 13, 1991).

At page 5 of her brief, the Examining Attorney argues that "based on the dictionary definitions of record, it is clear that the term WORLD WIDE SERVER is descriptive of applicant's software, and application service provider services featuring software, which use a world wide server." In this regard, the Examining Attorney cites The American Heritage Dictionary of the English Language (3d ed. 1992). This dictionary defines the word "worldwide" as meaning "involving or extending throughout the entire world; universal: a worldwide epidemic." The dictionary defines the word "server" as "a computer or program that controls a central repository of data that can be downloaded and manipulated in some manner by a client."

However, the Examining Attorney simply fails to even explain (much less prove) how the term "world wide server" is descriptive of any quality or characteristic of applicant's goods or services. Indeed, throughout her brief the Examining Attorney makes no distinction in her discussion of

mere descriptiveness between applicant's goods and applicant's services.

Of course, the issue before this Board is not whether the term "world wide server" is merely descriptive of applicant's goods or services. Rather, the issue is whether applicant's mark WORLD WIDE SERVER MP (emphasis added) is merely descriptive of applicant's goods or services. In this regard, it should be noted that in the first Office Action the Examining Attorney contended that the initialism MP means "multiprocessing." The Examining Attorney cited the TechEncyclopedia (2001).

In response, applicant stated that the initialism MP has 124 meanings. Applicant cited www.acronymfinder.com. To its credit, applicant acknowledged at page 3 of its response that "the majority of these [124] meanings are not related in any way to applicant's goods or services." However, continuing at page 3, applicant contended that there are numerous additional meanings of the initialism MP that are just as relevant to applicant's goods or services as is "multiprocessing." These include the following meanings: main process; master processor; maximum power; message processor; micro-processor; module processor; multi purpose;

multilink protocol; multi-point; multiple platform; and multi-protocol.

In her second Office Action, the Examining Attorney never took issue with applicant's contention that the initialism MP has numerous meanings many of which (at least 12) are relevant to applicant's goods or services. Rather, without offering any explanation, the Examining Attorney now contended that as applied to applicant's goods and services, the initialism MP meant "multi-platform." In particular, the Examining Attorney in her second Office Action never explained why she was now departing from the view expressed in her first Office Action that the initialism MP meant "multiprocessing." Presumably, the Examining Attorney changed her view as to the meaning of the initialism MP because she was able to find 5 articles from the Nexis database and a few Internet stories where the term "multi-platform" was used in proximity to MP. As an example, an article from the October 1, 2001 edition of Military & Aerospace Electronics reads, in part, as follows: "Laurel Technologies ... will provide Explorer MP rugged portable multi-platform work stations for Army and Marine Corps digital battlefield applications." The Examining Attorney never explained how this article or the others she submitted

demonstrated that as used in applicant's mark WORLD WIDE SERVER MP, the initialism MP means "multi-platform," and only "multi-platform."

In summary, we find that even assuming for the sake of argument that the phrase "world wide server" is descriptive of applicant's goods and services, that the Examining Attorney has simply failed to prove that applicant's mark WORLD WIDE SERVER MP is likewise merely descriptive of applicant's goods and services. As previously noted, the Examining Attorney has never taken issue with applicant's contention that the initialism MP has numerous (at least 12) very different meanings as applied to applicant's goods and services. Indeed, many of the other definitions of MP arguably better "fit" with the term "world wide server" than the definition currently of preference to the Examining Attorney (multi-platform). As just one example, given that applicant's goods are communications software and applicant's services include email, the definition "message processor" is arguably a better "fit" (i.e. "world wide server message processor") than "multi-platform," which results in "world wide server multi-platform."

Therefore, with the initialism MP having at least 12 plausible meanings, applicant's mark WORLD WIDE SERVER MP

simply does not immediately convey information about the qualities or characteristics of applicant's goods or services with the required "degree of particularity." TMS Corp. of the Americas, 200 USPQ at 59; Entenmann's Inc., 15 USPQ2d at 1751.

Decision: The refusal to register is reversed.